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OFFICE OF PETITIONS

In re Application of :
Biskeborn :
Application No. 09/938,457 :
Filed: August 23, 2001 :
Attorney Docket No. SJ09-2001- :
0135US1/IBM1P00 :

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed May 24, 2005 and resubmitted on June 7, 2005 and November 7, 2005 to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **GRANTED**.

The Office contended that the above-identified application became abandoned for failure to submit a response to the November 4, 2004 Restriction Requirement, which set an extendable one (1) month period for reply. No extensions of time or reply being received, the Office contended that this application became abandoned on December 5, 2004. A Notice of Abandonment was mailed on June 3, 2005.

Petitioner alleges that the November 4, 2004 Restriction Requirement was not received at the correspondence address of record.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioner has submitted a copy of two docket records where the requirement would have been entered had the November 4, 2004 Restriction Requirement been received. In addition, practitioner referenced the records in the petition and stated that a review of the application's file and docket records for the November 4, 2004 Restriction Requirement was fruitless.


For future reference when filing a Rule 181 petition alleging non-receipt, petitioner should not modify docket records **by word processing** to show where the outstanding requirement would have been entered had it been received. Annotations to the docket records should be handwritten, so to avoid confusion as to when the changes were made.

Petitioner has established non-receipt. The petition is **granted**, the Notice of Abandonment is vacated, and the holding of abandonment is withdrawn.

Regarding finances, petitioner was charged two \$130.00 petition fees. No petition fee is required. Therefore, deposit account no. 09-0466 will be refunded \$260.00.

After the mailing of this decision, the application will be returned to Technology Center AU 3724 for the re-mailing of the November 4, 2004 Restriction Requirement with a new period set for reply.

Telephone inquiries may be directed to the undersigned at (571) 272-3230.


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